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## NEWS RELEASE

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For Media Release:  
December 17, 2002

### **Comment Wanted on Rule Change to Make Attorney Disciplinary Proceeding Public 90 Days after Petition Served**

The Supreme Court of Hawai'i seeks public comment about the Disciplinary Board's proposal to amend Rule 2.22 of the Rules of the Supreme Court.

The proposal makes an attorney disciplinary proceeding public 90 days after a Petition for discipline is served. Under the current rule, an attorney disciplinary proceeding is not public until a hearing committee or officer recommends a public discipline.

The proposed rule amendment is as follows (deleted material is bracketed and new material in underlined):

#### **Rule 2.22 Confidentiality.**

**(a) General Rule.** The files, records, and proceedings of the Board, the hearing committees or officers, and Counsel, as they may relate to or arise out of any complaint or charge of unprofessional conduct against or investigation of an attorney, shall be deemed confidential and shall not be disclosed except under the following circumstances:

- (1) As between Counsel, the committees or officers, the Board, and the court in the furtherance of their duties;
- (2) As between the Board, Counsel, and an attorney admission or disciplinary authority, or judicial selection or disciplinary authority, of any jurisdiction in which the attorney affected is admitted to practice or seeks to practice;
- (3) Upon the request of the attorney affected;
- (4) Where permitted by this court;
- (5) Where required or permitted by these rules;
- (6) Where the investigation is predicated upon a conviction of the respondent for a crime;
- (7) Where this court enters an order transferring the respondent to inactive status pursuant to Rule 2.19; or
- (8) Where [a hearing committee or officer files, pursuant to Rule 2.7(c), a report with the Board recommending the imposition of public discipline by the Board or this court] 90 days have passed since the service on a respondent of a Petition for discipline, unless such time is extended by the Board Chairperson for no more than 45 days for good cause shown.

**(b)** Upon receipt of trustworthy evidence that an attorney has committed a crime and to protect the interests of the public, the administration of justice, or the legal profession, the Chairperson of the Board may authorize Counsel to disclose the evidence to appropriate law enforcement or prosecuting authorities. Counsel may not disclose that an attorney voluntarily sought, received, or accepted treatment from the Attorneys and Judges Assistance Program or the record of such treatment.

**(c)** The Chairperson of the Board, upon the receipt of trustworthy evidence, may authorize Counsel to disclose an attorney's possible substance abuse, physical or mental illness, or other infirmity to the

Director of the Attorneys and Judges Assistance Program.

**(d)** An affidavit resigning in lieu of discipline or consenting to disbarment submitted pursuant to Rule 2.14 shall be submitted to the hearing committee or officer, to the Board, and to this court at any time that the attorney applies for reinstatement. Such affidavit shall also be supplied to an attorney admission or disciplinary authority or judicial selection authority of any jurisdiction in which the attorney affected is admitted to practice or seeks to practice.

**(e)** In any case in which the subject matter becomes public through independent sources or through a waiver of confidentiality by the respondent, the Board may issue statements as it deems appropriate in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the respondent to a fair hearing without prejudgment, and to state that the respondent denies the allegations. The statement shall be first submitted to the respondent involved for his or her comments and criticisms prior to its release, but the Board in its discretion may release the statement as originally prepared.

**(f)** Except as ordered by this court, or as otherwise provided by these rules, the files, records and proceedings filed with this court by the Board, by Counsel or by a respondent, as well as any oral argument held before the court in connection with any disciplinary proceedings, are not confidential. [However, where the hearing committee or officer has recommended, and the Board has concluded, that the sole discipline should be a private reprimand, and the respondent or Counsel has declined to consent to such discipline, the proceedings shall remain confidential pending review by the supreme court, unless and until the court imposes public discipline or the Board imposes public discipline pursuant to a remand by the court.]

**(g)** In addition, the Board shall transmit notice of all public discipline imposed by this court, or transfer to inactive status due to disability, to the National Discipline Data Bank maintained by the American Bar Association.

Comments about the proposed rule should be submitted in writing no later than March 16, 2003 to the Judiciary Public Affairs Office, 417 South King Street, Honolulu, Hawai'i 96813.

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